Steve W. Berman (*pro hac vice*)
Mark S. Carlson (*pro hac vice*)
Jerrod C. Patterson (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com
markc@hbsslaw.com
jerrodp@hbsslaw.com

Rio S. Pierce, CBA No. 298297
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
riop@hbsslaw.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

REARDEN LLC, REARDEN MOVA LLC, Plaintiffs, v. DISNEY ENTERPRISES, INC., a Delaware corporation, DISNEY STUDIO PRODUCTION SERVICES CO., LLC f/k/a WALT DISNEY PICTURES PRODUCTION, LLC, a California limited liability company, WALT DISNEY PICTURES, a California corporation, MARVEL STUDIOS, LLC a Delaware limited liability company, MVL PRODUCTIONS LLC, a Delaware limited liability company, CHIP PICTURES, INC., a California corporation, INFINITY PRODUCTIONS LLC, a Delaware limited liability company, ASSEMBLED PRODUCTIONS II LLC, a Delaware limited liability company, Defendants.	Case No. 4:17-cv-04006-JST **DECLARATION OF STEPHEN PERLMAN IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** **FILED UNDER SEAL** Date: October 12, 2023 Time: 2:00 p.m. Judge: Hon. Jon S. Tigar Ctrm.: 6 (2nd Floor)

I, Stephen Perlman, declare as follows:

1.   I am founder, President and CEO of plaintiffs Rearden LLC ("Rearden") and wholly-owned subsidiary Rearden MOVA LLC. I have led the development and service offerings of Rearden's motion capture and facial capture technology since Rearden's founding almost 25 years ago. This litigation is focused on MOVA LLC's Contour facial capture, a technology I developed and introduced 17 years ago.

<u>Use of MOVA Contour MEL scripts in Maya files</u>

2.   Maya is a high-end 3D animation tool offered by Autodesk, used widely in the VFX industry. Rearden has been using Maya as a development tool since Rearden's founding almost 25 years ago. Maya has a built-in programming language called "Maya Embedded Language", or "MEL," and software written in MEL is called "MEL scripts." Rearden has been writing and using MEL scripts as an integral part of its facial capture processing pipeline for as long as it has been working in the motion capture and facial capture fields.

3.   When the Contour system is used to capture a performer's facial performance, the Contour software that does the first phases of the Contour processing pipeline was written primarily in C++ and Python languages. The Contour software that does the later phases of the Contour processing pipeline was written in MEL scripts.

4.   Because MOVA LLC has needed to produce final animated faces itself both for refining the Contour system and for showcasing to customers how good the final animated faces based on Contour can be, MOVA LLC developed its own post-processing Contour MEL scripts that animate the processed Contour faces and result in final animated faces.

5.   Unlike C++ or Python software, MEL script software generally resides within a Maya file, typically alongside the 3D data (e.g., a 3D face) that the MEL script is being used to process. These Maya files typically have a .ma, .mb, or .mel extension. The MEL scripts are always copied from non-volatile storage to RAM when the Maya file is opened, all of the MEL scripts are executed by the Maya app after they are loaded into RAM, and Maya presents a list of the MEL scripts to the Maya user, who is typically a 3D artist. The Maya user can then continue to use the MEL scripts to further manipulate the 3D face.
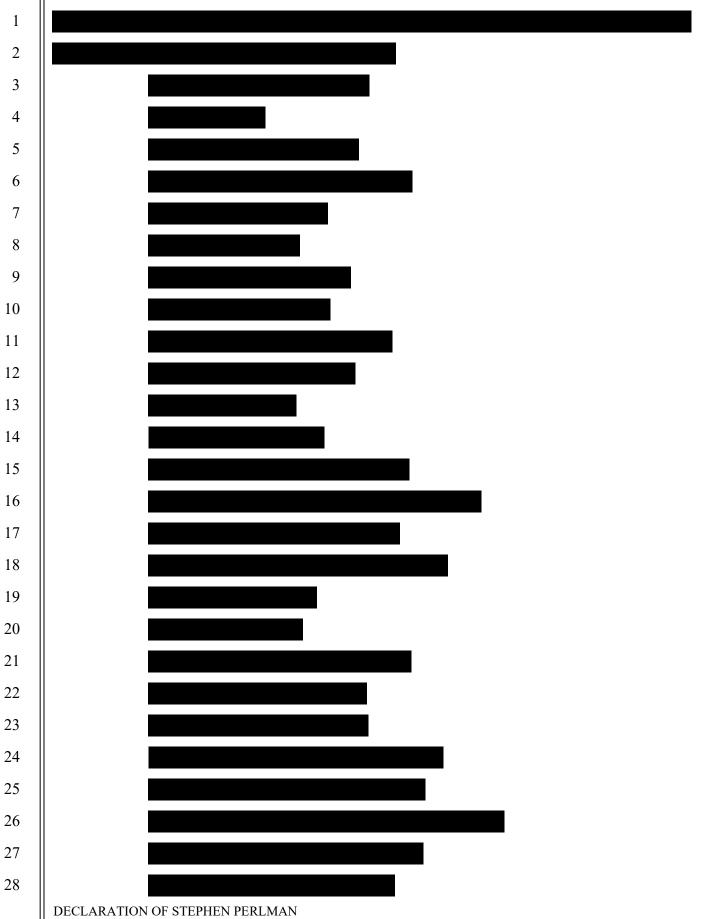
6. DD3 has admitted that it not only had Contour MEL scripts (and other Contour scripts) in its possession, but it had continued to use them, not just for processing the result of Contour facial captures, but for post-processing of Contour facial capture data by DD3 animators. Ken Pearce stated the following in a sworn declaration in March of 2019 (emphasis added):
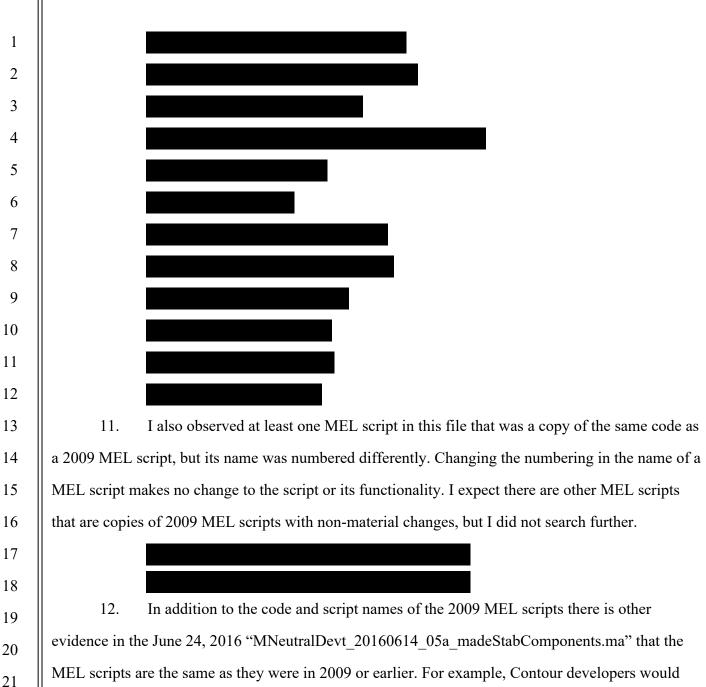
> Soon after starting at DD3 I copied MOVA scripts onto my DD3 workstation from computers and backup drives that had come from OL2. The scripts can be thought of source code, but unlike C or C++ source code, they are not compiled into applications. Instead, they remain in their original text form. *The MOVA scripts are tools that an animator could use to work on the data captured by MOVA. They were used to process the result of a MOVA capture and to automate third party programs like Maya.* (SHST ECF No. 515-3 ¶15)

7. Rearden recently received from DisputeSoft a large number of Maya files with Contour MEL scripts. They reveal that DD3 used the Contour MEL scripts continuously when it used Contour for facial capture processing for BATB and, significantly, also for Contour facial capture post-processing to animate the Beast's face in BATB.

8. While some new MEL scripts were written by DD3, the majority are Contour MEL scripts written by MOVA LLC.

9. Since the copyright registration for Contour software was filed as of 2009, I looked at post-Preliminary Injunction Maya files used to process and post-process (animate) the Contour capture of Dan Stevens' face in *Beauty and the Beast* ("BATB") to see whether the MEL scripts were the same as the MEL scripts used in 2009 by MOVA LLC, and they were. This was not surprising.

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11.   I also observed at least one MEL script in this file that was a copy of the same code as a 2009 MEL script, but its name was numbered differently. Changing the numbering in the name of a MEL script makes no change to the script or its functionality. I expect there are other MEL scripts that are copies of 2009 MEL scripts with non-material changes, but I did not search further.

12.   In addition to the code and script names of the 2009 MEL scripts there is other evidence in the June 24, 2016 "MNeutralDevt_20160614_05a_madeStabComponents.ma" that the MEL scripts are the same as they were in 2009 or earlier. For example, Contour developers would sometimes leave behind names of projects in their MEL scripts. For example, the June 24, 2016 MEL scripts included the comments (emphasis added):

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14   14.   While DD3 *did* include a large number 2009 MEL scripts in the

15 "MNeutralDevt_20160614_05a_madeStabComponents.ma" file, it also *did not* include some 2009

16 MEL scripts, and I believe this evidences DD3 made a conscious decision retain 2009 MEL scripts

17 that it used to create the Beast's face in BATB. The 2009 Contour MEL scripts that DD3 consciously

18 retained included scripts used for processing Contour captures and post-processing very advanced

19 facial animation, such as that which would be used to retarget Dan Stevens face to the shape of the

20 Beast's face, and animate the Beast's face.

21   15. Trademark Infringement:

22   16.   In 2004, Rearden formed MOVA LLC as a wholly-owned subsidiary to offer its

23 performance motion capture services, which at the time were limited to Vicon-branded marker-based

24 skeletal capture services. MOVA® was the *company name*.

25   17.   On July 31, 2006, MOVA LLC introduced Contour Reality Capture, a markerless

26 surface capture service (primarily used for facial surface capture). MOVA® remained the *company*

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28   [1] E.g., https://www.ign.com/videos/onlive-genifer-demo

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1   *brand*, which offered on its mova.com website both CONTOUR® *markerless facial surface capture*

2   *services* and Vicon-branded *marker-based skeletal capture services*. Knowing that other facial and

3   motion capture services would be offered in the future, Rearden took great care to use MOVA only

4   as a company brand and CONTOUR only as the performance facial capture brand.

5   18.   Before DD3 took unauthorized possession of the CONTOUR facial capture

6   technology, Disney properly used the MOVA mark in movie end credits to refer to MOVA or

7   MOVA LLC as the *company* offering facial capture services, not using MOVA to refer to the facial

8   capture *technology*. Exhibit B shows a screenshot of the end credits of Disney's *Tron: Legacy*

9   (2010), with the circled end credit, "Facial Motion Capture Provided by MOVA", and Exhibit C

10   shows a screenshot of the end credits of Disney's *The Avengers* (2012), with a circled visual effects

11   end credit to "MOVA LLC". I made Exhibits B and C by purchasing a copy of each movie, taking a

12   screenshot of the end credit, and then adding a red oval to highlight the MOVA end credit.

13   19.   When DD3 took unauthorized possession of the CONTOUR facial capture technology,

14   it replaced CONTOUR with MOVA as the brand for the facial capture services and replaced MOVA

15   with Digital Domain as the name of the company offering the services. This can be seen in the

16   Rearden's 2012 MOVA Rate Card (REARDEN_MOVA230626) in Exhibit D attached hereto, which

17   shows MOVA as the company and CONTOUR Reality Capture as the service, and DD3's 2016

18   MOVA Rate Card (DIS-REARDEN-0004821) in Exhibit E attached hereto that shows Digital

19   Domain as the company and MOVA as the service.

20   20.   Disney stated in its Motion for Summary Judgment that it was "necessary" to use the

21   MOVA trademark to describe the facial capture technology and services used by BATB. I do not

22   agree. MOVA *was not* the name of the facial capture technology and services, CONTOUR *was*.

23   Disney simply misused the MOVA trademark in direct defiance of the Preliminary Injunction Order

24   and then identified DD3 as the owner of the facial capture technology it described in the BATB end

25   credits and elsewhere, resulting in significant harm to the MOVA and CONTOUR trademarks.

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1   DATED: August 3, 2023   Stephen Perlman

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3   By   */s/ Stephen Perlman*
                                                Stephen Perlman
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